

Representative Christine F. Watkins proposes the following substitute bill:

PARENTAL RIGHTS OF BIOLOGICAL FATHERS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 78B, Chapter 6, Particular Proceedings, relating to consent and notice requirements before the adoption of a child.

Highlighted Provisions:

This bill:

▸ requires that notice of a potential adoption proceeding be provided to an unmarried biological father, unless an exception exists;

▸ provides that an unmarried biological father who receives notice of a potential adoption proceeding but fails to take action to protect his potential rights within 30 days after receiving the notice shall irrevocably forfeit:

• the ability to assert the right to consent or refuse to consent to an adoption of the child;

• the ability to assert the right to contest any future adoption of the child; and

• the right to notice of any adoption proceedings related to the child; and

▸ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **78B-6-110**, as last amended by Laws of Utah 2010, Chapter 237

30 **78B-6-121**, as last amended by Laws of Utah 2009, Chapter 159

31 ENACTS:

32 **78B-6-110.1**, Utah Code Annotated 1953



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **78B-6-110** is amended to read:

36 **78B-6-110. Notice of adoption proceedings.**

37 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
38 sexual relationship with a woman:

39 (i) is considered to be on notice that a pregnancy [~~and an adoption proceeding~~
40 ~~regarding the child~~] may occur; and

41 (ii) has a duty to protect his own rights and interests.

42 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
43 proceeding with regard to his child only as provided in this section and Section 78B-6-110.1.

44 (2) Notice of an adoption proceeding shall be served on each of the following persons:

45 (a) any person or agency whose consent or relinquishment is required under Section
46 78B-6-120 or 78B-6-121, unless that right has been terminated by:

47 (i) waiver;

48 (ii) relinquishment;

49 (iii) consent; or

50 (iv) judicial action;

51 (b) any person who has initiated a paternity proceeding and filed notice of that action
52 with the state registrar of vital statistics within the Department of Health, in accordance with
53 Subsection (3);

54 (c) any legally appointed custodian or guardian of the adoptee;

55 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
56 petition;

- 57 (e) the adoptee's spouse, if any;
- 58 (f) any person who, prior to the time the mother executes her consent for adoption or
59 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
60 the knowledge and consent of the mother;
- 61 (g) a person who is:
- 62 (i) openly living in the same household with the child at the time the consent is
63 executed or relinquishment made; and
- 64 (ii) holding himself out to be the child's father; and
- 65 (h) any person who is married to the child's mother at the time she executes her consent
66 to the adoption or relinquishes the child for adoption.
- 67 (3) (a) In order to preserve any right to notice, an unmarried, biological father may,
68 consistent with Subsection (3)(d):
- 69 (i) initiate proceedings in a district court of the state of Utah to establish paternity
70 under Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- 71 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
72 with the state registrar of vital statistics within the Department of Health.
- 73 (b) If the unmarried, biological father does not know the county in which the birth
74 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
75 Section 78B-3-307.
- 76 (c) The Department of Health shall provide forms for the purpose of filing the notice
77 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
78 health department in each county.
- 79 (d) The action and notice described in Subsection (3)(a):
- 80 (i) may be filed before or after the child's birth; and
- 81 (ii) shall be filed prior to the mother's:
- 82 (A) execution of consent to adoption of the child; or
- 83 (B) relinquishment of the child for adoption.
- 84 (4) Notice provided in accordance with this section need not disclose the name of the
85 mother of the child who is the subject of an adoption proceeding.
- 86 (5) The notice required by this section:
- 87 (a) may be served at any time after the petition for adoption is filed;

88 (b) shall be served at least 30 days prior to the final dispositional hearing;

89 (c) shall specifically state that the person served must respond to the petition within 30
90 days of service if ~~he~~ the person intends to intervene in or contest the adoption;

91 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
92 to file a motion for relief within 30 days after the day on which the person is served with notice
93 of an adoption proceeding;

94 (e) is not required to include, nor be accompanied by, a summons or a copy of the
95 petition for adoption; and

96 (f) shall state where the person may obtain a copy of the petition for adoption.

97 (6) (a) A person who has been served with notice of an adoption proceeding and who
98 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

99 (i) within 30 days after the day on which the person was served with notice of the
100 adoption proceeding;

101 (ii) setting forth specific relief sought; and

102 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
103 which the motion is based.

104 (b) A person who fails to fully and strictly comply with all of the requirements
105 described in Subsection (6)(a) within 30 days after the day on which the person was served
106 with notice of the adoption proceeding:

107 (i) waives any right to further notice in connection with the adoption;

108 (ii) forfeits all rights in relation to the adoptee; and

109 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
110 the adoptee.

111 (7) Service of notice under this section shall be made as follows:

112 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
113 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
114 Rules of Civil Procedure.

115 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
116 shall designate the content of the notice regarding the identity of the parties.

117 (iii) The notice described in this Subsection (7)(a) may not include the name of a
118 person seeking to adopt the adoptee.

119 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
120 is required under this section, service by certified mail, return receipt requested, is sufficient.

121 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
122 attempts, the court may issue an order providing for service by publication, posting, or by any
123 other manner of service.

124 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
125 action with the state registrar of vital statistics in the Department of Health in accordance with
126 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
127 the last address filed with the registrar.

128 (8) The notice required by this section may be waived in writing by the person entitled
129 to receive notice.

130 (9) Proof of service of notice on all persons for whom notice is required by this section
131 shall be filed with the court before the final dispositional hearing on the adoption.

132 (10) Notwithstanding any other provision of law, neither the notice of an adoption
133 proceeding nor any process in that proceeding is required to contain the name of the person or
134 persons seeking to adopt the adoptee.

135 (11) Except as to those persons whose consent to an adoption is required under Section
136 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
137 served to:

138 (a) intervene in the adoption; and

139 (b) present evidence to the court relevant to the best interest of the child.

140 Section 2. Section **78B-6-110.1** is enacted to read:

141 **78B-6-110.1. Notice of potential adoption proceedings.**

142 (1) As used in this section, "birth father" means:

143 (a) a potential biological father; or

144 (b) an unmarried biological father.

145 (2) Except as provided in Subsection (9), before a relinquishment of a child for
146 adoption, a birth mother or her designee shall notify a birth father of the child that the mother
147 of the child is considering an adoptive placement for the child.

148 (3) Providing a birth father with notice under Subsection (2) does not obligate the
149 mother of the child to proceed with an adoptive placement of the child.

150 (4) The notice described in Subsection (2) shall include the following information:
151 (a) a statement that the mother intends to place the child for adoption;
152 (b) a statement that the mother has named the person receiving the notice as a potential
153 birth father of her child;
154 (c) the requirements to assert the right to contest the adoption, including taking the
155 following steps within 30 days after the day on which the notice is served:
156 (i) initiating proceedings to establish or assert paternity in a district court of Utah
157 within 30 days after the day on which notice is serviced, including filing an affidavit stating:
158 (A) that the birth father is fully able and willing to have full custody of the child;
159 (B) the birth father's plans to care for the child; and
160 (C) that the birth father agrees pay for child support and expenses incurred in
161 connection with the pregnancy and birth;
162 (ii) filing a notice of commencement of paternity proceedings with the state registrar of
163 vital statistics within the Utah Department of Health; and
164 (iii) offering to pay, and paying, a fair and reasonable amount of the expenses incurred
165 in connection with the mother's pregnancy and birth, in accordance with his financial ability,
166 unless the birth mother refuses to accept the birth father's offer to pay;
167 (d) the consequences for failure to comply with Subsection (4)(c), including that:
168 (i) the birth father's ability to assert the right to consent or refuse to consent to the
169 adoption is irrevocably lost;
170 (ii) the birth father will lose the ability to assert the right to contest any future adoption
171 of the child; and
172 (iii) the birth father will lose the right to notice of any adoption proceedings related to
173 the child;
174 (e) that the birth father may consent to the adoption, if any, within 30 days after the day
175 on which the notice is received, and that his consent is irrevocable;
176 (f) that no communication between the mother of the child, or a person claiming to
177 represent the mother of the child, and the birth father changes the rights and responsibilities of
178 the birth father described in the notice;
179 (g) that the birth father may wish to consult an attorney regarding his potential rights
180 and obligations; and

- 181 (h) the name and contact information of the individual sending the notice.
- 182 (5) The notice described in Subsection (2) may not include the name of the birth
183 mother without her prior, written consent.
- 184 (6) If a birth father contacts the individual who provides him the notice described in
185 Subsection (2) offering to pay, or providing payment, for expenses incurred in connection with
186 the mother's pregnancy and birth under Subsection (4)(c)(iii), and the individual is not the birth
187 mother, the individual:
- 188 (a) shall inform the birth mother of the birth father's offer;
- 189 (b) shall give any money the birth father gives to the individual to the birth mother; and
- 190 (c) may not refuse the birth father's payment on the birth mother's behalf.
- 191 (7) If the recipient of the notice described in Subsection (2) does not fully and strictly
192 comply with the requirements of Subsection (4)(c) within 30 days after the day on which he
193 receives the notice, he forfeits:
- 194 (a) the ability to assert the right to consent or refuse to consent to an adoption of the
195 child described in the notice;
- 196 (b) the ability to assert the right to contest any future adoption of the child described in
197 the notice; and
- 198 (c) the right to notice of any adoption proceedings relating to the child described in the
199 notice.
- 200 (8) The notice described in Subsection (2) shall be served on a birth father in
201 accordance with the Utah Rules of Civil Procedure or by certified mail.
- 202 (9) The birth mother is excused from the requirements of this section if:
- 203 (a) notice of, or consent to, an adoption proceeding would not be required under
204 Section 78B-6-111; or
- 205 (b) it is shown by a preponderance of the evidence in a judicial proceeding that the
206 birth father has engaged in physically abusive behavior toward the birth mother in the past, and
207 she fears he will be abusive in the future.
- 208 Section 3. Section **78B-6-121** is amended to read:
- 209 **78B-6-121. Consent of unmarried biological father.**
- 210 (1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to
211 Subsection (5), with regard to a child who is placed with adoptive parents more than six

212 months after birth, consent of an unmarried biological father is not required unless the
213 unmarried biological father:

214 (a) (i) developed a substantial relationship with the child by:

215 (A) visiting the child monthly, unless the unmarried biological father was physically or
216 financially unable to visit the child on a monthly basis; or

217 (B) engaging in regular communication with the child or with the person or authorized
218 agency that has lawful custody of the child;

219 (ii) took some measure of responsibility for the child and the child's future; and

220 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial
221 support of the child of a fair and reasonable sum in accordance with the father's ability; or

222 (b) (i) openly lived with the child:

223 (A) (I) for a period of at least six months during the one-year period immediately
224 preceding the day on which the child is placed with adoptive parents; or

225 (II) if the child is less than one year old, for a period of at least six months during the
226 period of time beginning on the day on which the child is born and ending on the day on which
227 the child is placed with adoptive parents; and

228 (B) immediately preceding placement of the child with adoptive parents; and

229 (ii) openly held himself out to be the father of the child during the six-month period
230 described in Subsection (1)(b)(i)(A).

231 (2) (a) If an unmarried biological father was prevented from complying with a
232 requirement of Subsection (1) by the person or authorized agency having lawful custody of the
233 child, the unmarried biological father is not required to comply with that requirement.

234 (b) The subjective intent of an unmarried biological father, whether expressed or
235 otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been
236 met, shall not preclude a determination that the father failed to meet the requirements of
237 Subsection (1).

238 (3) Except as provided in Subsection 78B-6-122(1), and subject to Subsection (5), with
239 regard to a child who is six months of age or less at the time the child is placed with adoptive
240 parents, consent of an unmarried biological father is not required unless, prior to the time the
241 mother executes her consent for adoption or relinquishes the child for adoption, the unmarried
242 biological father:

243 (a) initiates proceedings in a district court of Utah to establish paternity under Title
244 78B, Chapter 15, Utah Uniform Parentage Act;

245 (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:
246 (i) stating that he is fully able and willing to have full custody of the child;
247 (ii) setting forth his plans for care of the child; and
248 (iii) agreeing to a court order of child support and the payment of expenses incurred in
249 connection with the mother's pregnancy and the child's birth;

250 (c) consistent with Subsection (4), files notice of the commencement of paternity
251 proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the
252 Department of Health, in a confidential registry established by the department for that purpose;
253 and

254 (d) offered to pay and paid a fair and reasonable amount of the expenses incurred in
255 connection with the mother's pregnancy and the child's birth, in accordance with his financial
256 ability, unless:

257 (i) he did not have actual knowledge of the pregnancy;
258 (ii) he was prevented from paying the expenses by the person or authorized agency
259 having lawful custody of the child; or
260 (iii) the mother refuses to accept the unmarried biological father's offer to pay the
261 expenses described in this Subsection (3)(d).

262 (4) The notice described in Subsection (3)(c) is considered filed when it is entered into
263 the registry described in Subsection (3)(c).

264 (5) Consent of an unmarried biological father is not required under this section if:
265 (a) the court determines, in accordance with the requirements and procedures of Title
266 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological
267 father's rights should be terminated, based on the petition of any interested party; ~~or~~

268 (b) (i) a declaration of paternity declaring the unmarried biological father to be the
269 father of the child is rescinded under Section 78B-15-306; and
270 (ii) the unmarried biological father fails to comply with Subsection (3) within 10
271 business days after the day that notice of the rescission described in Subsection (5)(b)(i) is
272 mailed by the Office of Vital Records within the Department of Health as provided in Section
273 78B-15-306[-]; or

274 (c) the unmarried biological father was notified under Subsection 78B-6-110.1 and
275 failed to fulfill the requirements of Subsection (3) within 30 days after receiving the notice.

276 (6) Unless the adoptee is conceived or born within a marriage, the petitioner in an
277 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a
278 certificate from the state registrar of vital statistics within the Department of Health, stating:

279 (a) that a diligent search has been made of the registry of notices from unmarried
280 biological fathers described in Subsection (3)(c); and

281 (b) (i) that no filing has been found pertaining to the father of the child in question; or

282 (ii) if a filing is found, the name of the putative father and the time and date of filing.